

IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE EASTERN DISTRICT OF TENNESSEE

IN RE )	
SOUTHWEST EQUIPMENT RENTAL, INC.)	NO. 1-88-00033
d.b.a. SOUTHWEST MOTOR FREIGHT )	
Debtor )	Chapter 7
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C. KENNETH STILL, TRUSTEE )	
Plaintiff )	
v. )	ADV. NO. 1-89-0013
GREENVILLE METALCRAFT CORPORA- )	
TION, n.k.a. SOUTHMARK METAL )	
MANUFACTURING COMPANY )	
Defendant )	

**M E M O R A N D U M**

In this adversary proceeding, plaintiff, the bankruptcy trustee for the motor carrier, Southwest Equipment Rental, Inc., d.b.a Southwest Motor Freight ("Southwest"), seeks to recover from the defendant shipper alleged undercharges for shipments transported by Southwest for the defendant. The proceeding is before the court upon the plaintiff's motion for summary judgment filed on November 5, 1991.

Having considered the plaintiff's motion and the record in this case, the court finds the plaintiff is entitled to a summary judgment. The affidavit of R. Clark McDaniel, accompanying the plaintiff's motion, establishes that Southwest had assessed, and the defendant paid, less than the full applicable published effective tariff rates and charges for the shipments at issue, resulting in undercharges of \$3,688.05. The plaintiff is entitled to recover the filed rates even though the common carrier and shipper may have agreed on negotiated rates which were less than the filed rates. *Maislin Indus. v. Primary Steel*, 110 S. Ct. 2759 (1990). The defendant has failed to demonstrate there exists a genuine issue of material fact that would preclude a summary judgment. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Boyd v. Ford Motor Co.*,

948 F.2d 283, 285 (6th Cir. 1991). The plaintiff is entitled to a judgment in the amount of the undercharges plus prejudgment interest. *See Consolidated Rail Corp. v. Certainteed Corp.*, 835 F.2d 474 (3d Cir. 1989).

An order will enter granting the plaintiff's motion.

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JOHN C. COOK  
United States Bankruptcy Judge